IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO.1001 OF 2003

IN

SUMMARY SUIT NO. 2099 OF 2003

Tata Motors Ltd ....**Plffs.**
vs.
Tiwary Bechar and co. .....**Defnds.**

C.S. Balsara i/b. Mulla and Mulla for the plaintiffs.

Shailesh Shah a/w. Ms. Deepa Mani i/b. S.K. Srivastava and Co. for the defendants.

CORAM: S.U. KAMDAR, J.

DATE : 22ND AUGUST 2005.

P.C. :

1. The present suit is filed for the recovery of sum of Rs.1,64,22,396/- arising out of two promissory notes which are annexed as Ex.B for sum of Rs.50.00 lacs and Ex.I for sum of Rs.1.00 crore. The arrangement between the parties was that Tata Finance which was a separate independent company would finance the

transactions of purchase of the cars by the defendant from Tata Motors Ltd and inrespect thereof the payment would be made by Tata Finance Ltd directly to Tata Motors Ltd. Pursuant thereto an amount of one and half crores has been paid by Tata Finance Ltd to Tata Motors Ltd. After giving credit for the various amounts paid by the defendants to Tata Finance Ltd or to Tata Motors Ltd the plaintiff has annexed the statement of account in which the defendant is liable to make the payment to the plaintiff for sum of Rs.1,64,22,396/- inclusive of interest. Apart therefrom the plaintiff has also relied upon the acknowledgment of liability for the sum of Rs,52,33,580.90/- dated 22.6.2003. The said company Tata Finance Ltd has since merged with the plainiff company pursuant to a scheme of amalgamation sanctioned by this court.

2. The plaintiff has raised two defences. Firstly it has been contended that the present

suit is not maintainable as summary suit and Ex.M at page 41 of the plaint indicates that the suit is on account. He has further contended that the promissory notice being merely a collateral security and the suit is not based on the said promissory note. He has placed reliance on THE STATEMENT containing details of the amount disbursed by the plaintiffs to the defendants particularly items which are set out at Ex.M particularly item no.8 and 50. It has been contended that infact inrespect of item no.8 the said sum of Rs.39,58,891/- was never received either by the defendant or by Tata Motors Ltd. It has been further contended that Item 50 for sum of Rs. 3,392,908/- is an over due interest and the same is evident from the receipt voucher dated 21.12.2000.

3. He has further contended that the present suit requires to be tried and triable issues are made out. I am of the opinion that the suit is based on promissory note and documents which are annexed to the suit

indicates that infact the amount of the said promissory note of one and half crores was lent and advanced by the said Tata Finance to defendant by making payment thereof to the plaintiff herein. It is also clear that large amount of money is outstanding as due and payable by the defendants. Learned counsel for the defendant has further contended that the acknowledgement of liability is false and fabricated document. I am not satisfied with the said defence because it is an admitted position that the said acknowledgement of liability is on the letter head of the defendant. Merely by his stating that the document is false he cannot escape from the liability to pay. I am of the opinion that the defence raised by the defendants pertaining to the entry set out therein is bogus. However I grant an opportunity to the defendant to defend the suit. The defendants are directed to deposit a sum of Rs.50.00 lacs within a period of four weeks from today failing which the plaintiff will be entitled to the decree.

4. If the amount is paid as aforestated, then suit is transferred to the list of Commercial Causes. Written statement or points of defence to be filed four weeks from today. Affidavits, list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on board of the learned Judge taking Commercial Causes. If amount is deposited then the same are to be invested in fixed deposit by the office of the Prothonotary and Senior Master, High Court, Mumbai initially for a period of three years and renew the same from time to time till further orders. The amount to be invested with the nationalised banks.

sd/-

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